



E-Filed on December 29, 2006

1 3993 Howard Hughes Parkway, Suite 600
 2 Las Vegas, NV 89109
 3 Facsimile (702) 949-8321
 4 Telephone (702) 949-8320

5 40 North Central Avenue, Suite 1900
 6 Phoenix, Arizona 85004-4429
 7 Facsimile (602) 734-3824
 8 Telephone (602) 262-5756

9 Susan M. Freeman AZ State Bar No. 004199
 10 Email: sfreeman@lrlaw.com
 11 Rob Charles NV State Bar No. 0065934
 12 Email: rcharles@lrlaw.com

13 Attorneys for Official Committee of Unsecured Creditors

14 **UNITED STATES BANKRUPTCY COURT**
 15 **DISTRICT OF NEVADA**

16 **In re:**

17 **USA Commercial Mortgage Company**
 18 **06-10725 – Lead Case**

19 **USA Capital Realty Advisors, LLC**
 20 **06-10726**

21 **USA Capital Diversified Trust Deed Fund,**
 22 **LLC**
 23 **06-10728**

24 **USA Capital First Trust Deed Fund, LLC**
 25 **06-10728**

26 **USA Securities, LLC**
 27 **06-10729**

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegle Presiding

RESPONSE TO DAYCO FUNDING CORPORATION'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Date: January 17, 2007

Time: 9:30 a.m.

Affecting:

All Cases

or Only:

- .. USA Commercial Mortgage Company
- .. USA Capital Realty Advisors, LLC
- .. USA Capital Diversified Trust Deed Fund, LLC
- .. USA Capital First Trust Deed Fund, LLC
- .. USA Securities, LLC

28 The Official Committee of Unsecured Creditors of USA Commercial Mortgage
 29 Company (the "Committee") joins in Debtors' opposition and opposes the Dayco Funding
 30 Corporation's Motion for Relief From the Automatic Stay because Movant has not
 31 demonstrated good cause for the relief it seeks. This opposition is explained in the



1 following Memorandum and is supported by the Court's record, including the record to be
2 developed on the Motion.

3 **MEMORANDUM**

4 **Background**

5 Dayco's papers indicate that it purchased the loan in question from Citizens
6 Business Bank after the loan matured on August 15, 2006. The documentation evidencing
7 the assignment of the loan is dated September 21, 2006. Consequently, Dayco had
8 knowledge of the instant bankruptcy cases and that the loan was in default before Dayco
9 bought the loan. Interestingly, Dayco withheld the purchase price it paid for the loan.

10 Dayco now says it is prejudiced because the loan it purchased cannot be foreclosed
11 due to the bankruptcy it knew about of USA Commercial Mortgage Company. Dayco
12 fails to provide any evidence demonstrating that its sole remedy is foreclosure. Nor does
13 Dayco balance the hardships between allowing to foreclose the lien it purchased and the
14 rights of the Direct Lenders whose loan is evidenced by the loan documents between
15 Southern California Land Development, LLC and the Direct Lenders (including USACM).
16 Nor does Dayco provide any evidence with respect to the value of the Property, which
17 may indicated that Dayco's interest is adequately protected by equity in the Property.

18 **Argument**

19 The automatic stay may be terminated under § 362(d) for good cause. Good cause
20 involves a balancing by the Court in its discretion. Here, Dayco has failed to provide any
21 evidence of real hardship, and has failed to balance the hardships.

22 Conversely, the automatic stay caused by the bankruptcy filing of USACM may
23 terminate on the Effective Date of the Joint Plan of Reorganization. 11 U.S.C. §
24 362(c)(1). At the same time, Compass Partners LLC as purchaser of the servicing
25 obligations will be in a position to represent the interests of the Direct Lenders.



On balance, requiring Dayco to wait until the automatic stay is terminated by operation of law, at a time when Compass can then protect the interests of Direct Lenders, does not impose any unusual hardship on Dayco.

Request for Relief

The Unsecured Committee requests that the Motion be denied.

Dated December 29, 2006.

LEWIS AND ROCA LLP

By /s/ RC (#006593)

Susan M. Freeman, AZ 4199 (pro hac vice)
Rob Charles, NV 6593

Attorneys for Official Committee of Unsecured Creditors